

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6856

Interconnection Agreement between Verizon New)
England Inc., d/b/a Verizon Vermont, and NEON)
Connect, Inc.)

Order entered: 8/19/2003

ORDER APPROVING AGREEMENT

I. BACKGROUND

On May 22, 2003, NEON Connect, Inc. ("NEON Connect") and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), filed an Acceptance and Agreement ("Agreement"), dated April 11, 2003, of Verizon's Statement of Generally Available Terms and Conditions ("SGAT"),¹ pursuant to Section 252(f) of the Telecommunications Act of 1996 (the "Act"), for approval by the Public Service Board ("Board").

On June 16, 2003, the Board solicited a recommendation from the Vermont Department of Public Service ("Department"). The Department, by letter dated July 7, 2003, recommended that the Board approve the Agreement in whole, finding that it did not violate Section 252 of the federal Telecommunications Act of 1996 and that the Agreement did not contain terms that will harm Vermont consumers or competitors. However, the Department questioned whether the substance of the services offered under the Agreement would remain unchanged if Verizon amends the SGAT during the term of the agreement or, instead, whether the interconnection agreement would track any future changes to the offered and accepted SGAT.

II. DISCUSSION

The Board's review of interconnection agreements is governed by the federal law that authorizes such agreements. Under Subsection 252(a) of the Act, any interconnection agreement negotiated under Section 252(a) must be submitted to the State commission for review under

¹The Board, by Order dated January 5, 1998, in Docket 5936, has allowed an SGAT for interconnection, unbundled network elements, resale, and ancillary telecommunications services.

Section 252(e).² While this Agreement is expressly not an agreement arrived at pursuant to Section 252(b) or Section 252(c),³ neither is it a tariff from which any party may purchase the network elements or telecommunications services available through the SGAT without an acceptance and agreement as filed here. Accordingly, the Board's practice is to approve such an agreement pursuant to Section 252(e).⁴ This policy applies to any subsequent amendments to the Agreement, and addresses the concerns raised by the Department in its recommendation letter.

The State commission has the authority to "approve or reject the agreement, with written findings as to any deficiencies." The Board may not reject the proposed interconnection agreement in whole or in part unless it finds that the agreement or any material portion thereof discriminates against a non-party carrier or is inconsistent with the public interest. The Board may also establish and enforce other requirements of State law in its review of the agreement under Section 252(e)(3). The Board must act to approve or reject the agreement within 90 days of its submission, or the agreement is deemed approved.⁵ The 90-day review period mandated by that section for this Agreement ends on August 20, 2003.

The Agreement is the result of arms-length negotiations between two telecommunications carriers. The Board's focus, as the Act provides, is therefore limited to the issues set forth in Section 252(e)(2)(A): whether the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement, and whether the agreement is consistent with the public interest, convenience, and necessity. As the Board concluded previously, in making its determination, the Board must focus upon the potential effect of the agreement on the evolution of competition in this state and whether the agreement raises the risk of harm to consumers (and thus is not consistent with the public interest).⁶

The competition enabled by this and other interconnection agreements will likely benefit Vermont consumers and is consistent with the State's telecommunications goals as set out in

²Under the Act, the Board is the "State Commission" in Vermont. 47 U.S.C.A. § 3(41).

³Agreement at Attachment 1-3, paragraph 6.

⁴[GY - cite Sprint????]

⁵47 U.S.C. § 252(e)(4).

⁶Docket 5905, Order of 11/4/96 at 12.

30 V.S.A. § 202c and the Telecommunications Plan adopted under Section 202d. At the same time, the Agreement does not contain terms that will harm consumers or competitors. It thus promotes the public interest.

The Agreement also does not discriminate against telecommunications carriers who are not a party to it. Pursuant to 47 U.S.C. § 252(i), other companies seeking to interconnect may adopt the same terms and conditions.

Finally, our approval of the Agreement applies only to those terms and conditions set out therein. To the extent parties negotiate modifications or clarifications to the Agreement, they are not subsumed in our approval of the current Agreement. To the extent the changes are material, the parties will need to seek additional approvals from the Board.

III. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to Section 252(e)(1) of the Telecommunications Act of 1996, the Agreement between Verizon New England Inc., d/b/a Verizon Vermont, and NEON Connect, Inc., is hereby approved.
2. Verizon and NEON Connect shall be bound to comply with any lawful requirement imposed by the Board in Docket 5713, Docket 5903, any docket or rule established with respect to E-911 service, and any other docket or rulemaking proceeding governing the obligations of telecommunications carriers in Vermont.
3. Verizon and NEON Connect shall notify the Board and Department of any modifications to the Interconnection Agreement or the establishment of any terms and conditions that the Interconnection Agreement as filed leaves to further negotiations. If necessary, Verizon and NEON Connect shall seek Board approval for the new or changed terms and conditions.

Dated at Montpelier, Vermont, this 19th day of August, 2003.

<u>s/Michael H. Dworkin</u>)	PUBLIC SERVICE
)	
)	BOARD
<u>s/David C. Coen</u>)	
)	OF VERMONT
)	
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 19, 2003

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.